

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

D.R., a minor, by his grandfather and next friend, Robert Hawksley,	:	APPEAL NO. C-120530 TRIAL NO. DR-1201285
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
J.R.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant D.R., through his grandfather as next friend, Robert Hawksley, appeals from the judgment of the Hamilton County Domestic Relations Court in favor of defendant-appellee J.R., D.R.’s father (“Father”), on D.R.’s complaint to set aside an acknowledgement of paternity entered into by Father and K.R., D.R.’s mother (“Mother”). The trial court determined that Hawksley lacked standing to pursue a statutory claim under R.C. 3111.28, and the trial court then applied res judicata to determine that a prior decision of this court barred D.R.’s common-law fraud claim.

In his first assignment of error, D.R. asserts that the trial court erred in granting summary judgment for Father, arguing that the trial court erroneously

determined that D.R. and Mother are in privity for purposes of res judicata. Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995), syllabus. In order for res judicata to apply, “the parties to the subsequent action must be identical to or in privity with those in the former action.” *Kirkhart v. Keiper*, 101 Ohio St.3d 377, 2004-Ohio-1496, 805 N.E.2d 1089, ¶ 8. In terms of privity, the Ohio Supreme Court has recognized that “a mutuality of interest, including an identity of desired result, may create privity.” *State ex rel. Schachter v. Ohio Pub. Emp. Retirement Bd.*, 121 Ohio St.3d 526, 2009-Ohio-1704, 905 N.E.2d 1210, ¶ 34.

In this case, D.R.’s maternal grandfather has brought an action on behalf of his six-year-old grandson seeking an identical result as that pursued by Mother in her previous suit—namely disestablishing Father’s paternity by voiding the acknowledgement of paternity. The instant action was filed within 30 days of the release of this court’s prior decision on Mother’s complaint. Thus, on this record, the trial court properly determined that D.R. and Mother are in privity.

This case is distinguishable from *Broxterman v. Broxterman*, 101 Ohio App.3d 661, 656 N.E.2d 394 (1st Dist.1995), primarily relied upon by D.R. in oral argument. In *Broxterman*, maternal grandparents of a minor child filed a motion for a blood test to determine parentage on behalf of themselves and the child, alleging that the child was not an issue of the marriage between the minor’s mother and her then-husband, as found by the trial court in a divorce decree nearly six years earlier. The grandparents attached to the motion an affidavit by the mother, in which the

mother averred that the child had been fathered by another man. The trial court determined that the issue of the child's parentage was barred by res judicata, and the grandparents appealed. This court determined that res judicata did not apply to the child's claim, determining that the child and the mother lacked privity because the child's interests "may diverge [from his mother's] on * * * issues, such as his right to know the identity of his biological father and his potential rights of inheritance from his biological father." *Id.* at 662-664.

In *Broxterman*, the court determined that the child, in a post decree situation, may have an interest in knowing the identity of his biological father, whom the mother had named in her affidavit. In this case, unlike in *Broxterman*, D.R. was conceived as a result of a sexual assault and the biological father is unknown to Mother; therefore, D.R. does not argue that he has an interest in knowing the identity of his biological father. D.R.'s complaint was filed pre decree and on the heels of this court's judgment in Mother's case. D.R. does not allege any interest separate from that of Mother in her previous suit, evidencing that D.R.'s complaint was filed by Mother's father in an attempt to relitigate the very issue that Mother had just litigated. Because the trial court properly determined that D.R. and Mother are in privity in this instance, we conclude that D.R.'s causes of action are barred by res judicata. Consequently, we overrule D.R.'s first assignment of error.

In D.R.'s third assignment of error, he argues that the trial court erred in dismissing his claim under R.C. 3111.28 for lack of standing. Because we conclude that res judicata bars D.R.'s causes of action, we need not reach this assignment of error.

In his second assignment of error, D.R. argues that the trial court erred in denying his motion for summary judgment. In light of our disposition of D.R.'s first assignment of error, we overrule this assignment of error as well.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on January 25, 2013
per order of the court _____.
Presiding Judge